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 Garrett A. Fail

Attorneys for Lehman Brothers Holdings Inc.
 and Certain of Its Affiliates

**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

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	:
In re	: Chapter 11 Case No.
	:
LEHMAN BROTHERS HOLDINGS INC., et al.,	: 08-13555 (SCC)
	:
Debtors.	: (Jointly Administered)
	:
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**NOTICE OF MOTION TO AUTHORIZE THE DEPARTMENT
 OF THE TREASURY-INTERNAL REVENUE SERVICE'S FILING OF AN
 AMENDING AND SUPERSEDING PROOF OF CLAIM IN A REDUCED AMOUNT**

PLEASE TAKE NOTICE that the undersigned will present an order approving the annexed motion of Lehman Brothers Holdings Inc., as Plan Administrator under the *Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors* in the above-referenced chapter 11 cases, seeking authorization for the Department of the Treasury-Internal Revenue Service's ("IRS") filing of an amending and superseding proof of claim in a reduced amount (the "Motion"), to the Honorable Shelley C. Chapman, at the United States Bankruptcy Court, Alexander Hamilton Customs House, Courtroom 623, One Bowling Green, New York, New York, 10004 (the "Bankruptcy Court"), on **January 13, 2015 at 10:00 a.m. (Prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that unless a written objection to the Motion, with proof of service, is served and filed with (i) the chambers of the Honorable Shelley C. Chapman, One Bowling Green, New York, New York, 10004, Courtroom 623; (ii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York, 10153, Attn: Garrett A. Fail, Esq., attorneys for the Plan Administrator; (iii) the Office of the United States Trustee for Region 2, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014, Attn: William K. Harrington, Esq., Susan Golden, Esq. and Andrea Schwartz, Esq.; and (iv) Assistant United States Attorney, 86 Chambers Street, 3rd Floor, New York, New York 10007, Attn: Jean-David Barnea, Esq., attorneys for the IRS, so as to be received by **January 14, 2015 at 4:00 p.m. (Prevailing Eastern Time)**, there will not be a hearing and the Motion may be approved.

PLEASE TAKE FURTHER NOTICE that if a written objection is timely served and filed, a hearing (the "Hearing") will be held to consider the Motion on **January 15, 2015 at 10:00 a.m. (Prevailing Eastern Time)** before the Honorable Shelley C. Chapman, United States Bankruptcy Judge, at the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that objecting parties are required to attend the Hearing, and failure to appear may result in relief being granted or denied upon default.

Dated: January 6, 2014
New York, New York

/s/ Garrett A. Fail
Garrett A. Fail
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Objection Date and Time: January 13, 2015 at 4:00 p.m. (Prevailing Eastern Time)

Presentment Date and Time: January 14, 2015 at 10:00 a.m. (Prevailing Eastern Time)

Hearing Date and Time (Only if Objection Filed): January 15, 2015 at 10:00 a.m. (Prevailing Eastern Time)

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	:
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LEHMAN BROTHERS HOLDINGS INC., et al.,	:
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Debtors.	:
	:
-----X	

Chapter 11 Case No.
08-13555 (SCC)
(Jointly Administered)

**MOTION TO AUTHORIZE THE DEPARTMENT OF
THE TREASURY-INTERNAL REVENUE SERVICE'S FILING OF AN
AMENDING AND SUPERSEDING PROOF OF CLAIM IN A REDUCED AMOUNT**

Lehman Brothers Holdings Inc. ("LBHI" and the "Plan Administrator"), as Plan Administrator under the *Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors* (the "Plan") for the entities in the above-referenced chapter 11 cases (collectively, the "Chapter 11 Entities"), submits this motion and respectfully represents:

Relief Requested

1. Pursuant to sections 105(a) and 1142(b) of title 11 of the United States Code (the "Bankruptcy Code"), the Plan Administrator requests authority for the Department of the Treasury-Internal Revenue Service's (the "IRS") filing of an amending and superseding

proof of claim against Lehman Brothers Special Financing Inc. (“LBSF”) in a reduced amount, without prejudice to the Plan Administrator’s rights to object to such claim.

Background

2. On September 15, 2008 and periodically thereafter, LBHI and certain of its subsidiaries commenced voluntary cases (the “Chapter 11 Cases”) with this Court under chapter 11 of the Bankruptcy Code.

3. On December 22, 2010, the IRS filed proof of claim number 67291 against LBSF in the total amount of \$2,297,604,773.98 (the “Original LBSF Claim”).

4. On December 6, 2011, the Court entered an order confirming the Plan [ECF No. 23023] (the “Confirmation Order”). The Plan became effective on March 6, 2012 (the “Effective Date”). Pursuant to paragraph 86 of the Confirmation Order, other than in certain limited circumstances not applicable here, a proof of claim relating to a prepetition claim may not be filed or amended without the authority of the Court. Pursuant to Sections 6.1, 9.1 and 13.1 of the Plan, LBHI was appointed as Plan Administrator for each of the Chapter 11 Entities and, in its capacity as Plan Administrator, is authorized to control and effectuate the claims reconciliation process with respect to claims filed against the Chapter 11 Entities.

5. LBHI and the IRS have been involved in extensive and lengthy discussions and negotiations since the commencement of the Chapter 11 Cases. As a result, and as previously disclosed, over the course of the Chapter 11 Cases, the IRS and the Chapter 11 Entities have consensually resolved certain particular issues related to the Original LBSF Claim and to certain other proofs of claim filed by the IRS against the Chapter 11 Entities on or about December 22, 2010 (collectively, the “Original IRS Claims”). [ECF Nos. 25949, 31113 and 43395]. Additionally, prior to the Effective Date and as previously disclosed, the IRS and the

Chapter 11 Entities entered into an agreement limiting the reserves that would otherwise have to be maintained for the Original IRS Claims pursuant to section 8.4 of the Plan. *See* ECF No. 27649.

6. In accordance with the *Order Authorizing the Department of the Treasury-Internal Revenue Services Filing of Amending and Superseding Proofs of Claim in a reduced amounts* [ECF No. 41606], the IRS filed eight proofs of claim amending and superseding the Original IRS Claims. In pertinent part, the Original LBSF Claim was amended and superseded by proof of claim number 68163 to reflect a reduced claim amount of \$507,075,786.37 (the “Current LBSF Claim”).

7. As a result of the Plan Administrator’s continued progress in resolving open issues, the IRS filed a proof of claim on December 31, 2014, amending and superseding the Current LBSF Claim in a reduced amount (the “Amending Claim”). The Amending Claim has been assigned provisional claim number 68210 and significantly reduces the amounts asserted by the IRS against LBSF by approximately \$92 million to \$415,192,659.

Jurisdiction

8. This Court has subject matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

Authorizing the IRS to Amend the Current LBSF Claim is Appropriate Under the Circumstances

9. The Court has broad authority pursuant to sections 105(a) and 1142(b) of the Bankruptcy Code to issue orders necessary to implement the provisions of the Plan and the Bankruptcy Code. *See* 11 U.S.C. §1142(b) (“The court may direct the debtor and any other necessary party . . . to perform any other act . . . that is necessary to the consummation of the plan.”); 11 U.S.C. §105(a) (“The court may issue any order, process or judgment that is

necessary or appropriate to carry out the provisions of this title.”); *see also Hosp. & Univ. Prop. Damage Claimants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 7 F.3d 32, 34 (2d Cir. 1993) (finding that bankruptcy courts retain post-confirmation jurisdiction to the extent provided by the plan); *In re Oversight & Control Comm’n of Avanzit, S.A.*, 385 B.R. 525, 535 (Bankr. S.D.N.Y. 2008) (“The bankruptcy court retains jurisdiction under 11 U.S.C. §1142(b)... and it has ‘continuing responsibilities to satisfy itself that the [p]lan is being properly implemented.’”) (internal citations omitted).

10. A bar date is a mechanism providing a chapter 11 debtor and creditors with finality and, therefore, strictly observed. *Maxwell Macmillan Realization Liquidating Trust v. Aboff (In re Mcmillan)*, 186 B.R. 35, 48-49 (Bankr. S.D.N.Y. 1995). Amendments to proofs of claim may not be used to circumvent a bar date, and bankruptcy courts carefully scrutinize an amendment filed after a bar date to ensure that it is truly amending a timely filed proof of claim and not merely asserting an entirely new claim. *Id.* at 49; *see also In re Asia Global Crossing, Ltd.*, 324 B.R. 503, 507 (Bankr. S.D.N.Y. 2005) (noting that amendments are not automatic and are allowed at the discretion of the bankruptcy court). In the Second Circuit, courts determine whether a claimant may amend its claim after the bar date by first considering if “there was a timely assertion of a similar claim or demand evidencing an intention to hold the estate liable.” *See In re Enron Corp.*, 419 F.3d at 133-34. If an amended claim does not “relate back” to a timely-filed proof of claim, a court will consider the amendment to be a new, late-filed proof of claim. If the amended claim does “relate back” to a timely-filed proof of claim, the court will then consider whether it would be equitable to allow the late-filed amendment. *Id.* at 133. Here, the Amending Claim relates back to the Original LBSF Claim and does not assert any new or additional claims against LBSF or the other Chapter 11 Entities. Further, amendment of the

Current LBSF Claim is equitable and will not prejudice any party. The Plan Administrator expressly preserves all rights to object to the Amending Claim on any basis.

11. The Amending Claim asserts liability against LBSF in an amount significantly less than the amount asserted in the Current LBSF Claim. Authorizing the IRS to file the Amending Claim would allow LBSF to reduce reserves maintained on account of the Current LBSF Claim by approximately \$92 million in accordance with section 8.4 of the Plan in advance of the next Plan distribution.

12. Accordingly, the Plan Administrator respectfully requests entry of the proposed order attached hereto as “Exhibit A,” authorizing the filing of the Amending Claim and expunging the Current LBSF Claim in its entirety. Entry of the proposed order will ensure implementation of the Plan in a manner that maximizes returns to holders of Allowed Claims (as such term is defined in the Plan).

Notice

13. No trustee has been appointed in these Chapter 11 Cases. The Plan Administrator has served notice of this Motion in accordance with the procedures set forth in the second amended order entered on June 17, 2010, governing case management and administrative procedures for these cases [ECF No. 9635] on (i) the United States Trustee for Region 2; (ii) the Securities and Exchange Commission; (iii) the IRS; (iv) the United States Attorney for the Southern District of New York; and (v) all parties who have requested notice in the Chapter 11 Cases. The Plan Administrator submits that no other or further notice need be provided.

14. No previous request for the relief sought herein has been made by the Plan Administrator to this or any other court.

WHEREFORE the Plan Administrator respectfully requests that the Court grant the relief requested herein and such other and further relief as is just.

Dated: January 6, 2015
New York, New York

/s/ Garrett A. Fail
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Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	: Chapter 11 Case No.
LEHMAN BROTHERS HOLDINGS INC., et al.,	: 08-13555 (SCC)
Debtors.	: (Jointly Administered)
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**ORDER AUTHORIZING THE DEPARTMENT OF THE
TREASURY-INTERNAL REVENUE SERVICE'S FILING OF AMENDING
AND SUPERSEDING PROOF OF CLAIM IN A REDUCED AMOUNT**

Upon the motion, dated January 6, 2015 (the "Motion"),¹ of Lehman Brothers Holdings Inc., as Plan Administrator under the *Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors*, seeking authorization for the Department of the Treasury-Internal Revenue Service's filing of amending and superseding proof of claim in a reduced amount, as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided in accordance with the procedures set forth in the second amended order entered on June 17, 2010 governing case management and administrative procedures for these cases [ECF No. 9635]; and the Court having found and determined that the relief sought in the Motion is in the best interests of LBSF, its creditors, and all parties in interest and that the legal and factual bases set forth in

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the relief requested in the Motion is granted; and it is further

ORDERED that the filing of the Amending Claim is authorized; and it is further

ORDERED that, pursuant to section 502(b) of the Bankruptcy Code, the Current LBSF Claim is hereby amended and superseded by the Amending Claim and is hereby expunged in its entirety with prejudice; and it is further

ORDERED that all information included on and all documentation filed in support of the Current LBSF Claim, shall be treated as having been filed in support of and included in the Amending Claim; and it is further

ORDERED that the Court appointed claims agent shall update the claims register in accordance with this Order; and it is further

ORDERED that nothing in this Order or the expungement of the Current LBSF Claim constitutes any admission or finding with respect to the Amending Claim, and the Plan Administrator's rights to object to the Amending Claim on any basis are preserved; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: _____, 2015
New York, New York

United States Bankruptcy Judge